

109TH CONGRESS
2D SESSION

S. 2380

To add the heads of certain Federal intelligence agencies to the Committee on Foreign Investment in the United States, to require enhanced notification to Congress and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2006

Mr. DODD introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To add the heads of certain Federal intelligence agencies to the Committee on Foreign Investment in the United States, to require enhanced notification to Congress and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “U.S. National Security
5 Protection Act of 2006”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act—

1 (1) the term “Committee on Foreign Invest-
 2 ment in the United States” or “CFIUS” means the
 3 committee established by the President under Execu-
 4 tive Order 11858, May 7, 1975, and any successor
 5 thereto; and

6 (2) the term “intelligence community” has the
 7 same meaning as in section 3(4) of the National Se-
 8 curity Act of 1947 (50 U.S.C. 401a(4)).

9 **SEC. 3. COMMITTEE ON FOREIGN INVESTMENT IN THE**
 10 **UNITED STATES.**

11 (a) CFIUS MEMBERSHIP.—

12 (1) DIRECTORS OF NATIONAL INTELLIGENCE
 13 AND CENTRAL INTELLIGENCE.—Notwithstanding
 14 any other provision of law, the Director of National
 15 Intelligence and the Director of Central Intelligence
 16 shall be members of the Committee on Foreign In-
 17 vestment in the United States.

18 (2) VICE CHAIRS.—The Secretary of Homeland
 19 Security and the Secretary of Defense shall serve as
 20 vice chairs of the Committee on Foreign Investment
 21 in the United States.

22 (b) SUBCOMMITTEE ON INTELLIGENCE.—Not later
 23 than 30 days after the date of enactment of this Act, the
 24 President shall establish within the Committee on Foreign

1 Investment in the United States a Subcommittee on Intel-
 2 ligence, which shall be—

3 (1) chaired by the Director of National Intel-
 4 ligence; and

5 (2) comprised of the head of each member of
 6 the intelligence community.

7 **SEC. 4. SUBCOMMITTEE REVIEW OF CFIUS INVESTIGA-**
 8 **TIONS.**

9 Section 721 of the Defense Production Act of 1950
 10 (50 U.S.C. App. 2170) is amended by adding at the end
 11 the following:

12 “(I) INTELLIGENCE SUBCOMMITTEE REVIEWS OF IN-
 13 VESTIGATIONS.—

14 “(1) PRE-INVESTIGATION REVIEW AND COM-
 15 MENT.—The Subcommittee on Intelligence of the
 16 Committee on Foreign Investment in the United
 17 States shall—

18 “(A) review information relating to a pro-
 19 posed merger, acquisition, or takeover, during
 20 the 15-day period following the date of receipt
 21 of such information, and before the commence-
 22 ment of any investigation under subsection (a)
 23 or (b); and

1 “(B) provide written comments on any de-
 2 termination by the President or CFIUS not to
 3 conduct an investigation under subsection (a).

4 “(2) POST-INVESTIGATION REVIEW AND COM-
 5 MENT.—The Subcommittee on Intelligence of the
 6 Committee on Foreign Investment in the United
 7 States shall—

8 “(A) review each investigation conducted
 9 by the President or CFIUS under subsections
 10 (a) and (b); and

11 “(B) provide written comments on the re-
 12 sults of each such investigation.”.

13 **SEC. 5. TREATMENT OF CRITICAL INFRASTRUCTURE AS AF-**
 14 **FFECTING NATIONAL SECURITY.**

15 Section 721(b) of the Defense Production Act of
 16 1950 (50 U.S.C. App. 2170(b)) is amended by inserting
 17 after “commerce in the United States” the following: “,
 18 including any person that owns, controls, or operates any
 19 critical infrastructure, as defined in section 1016(e) of the
 20 USA PATRIOT Act (42 U.S.C. 5195c(e)),”.

21 **SEC. 6. CERTIFICATION OF NATIONAL SECURITY DETER-**
 22 **MINATIONS.**

23 “(m) PRESIDENTIAL OR CHAIR CERTIFICATION OF
 24 THREAT DETERMINATIONS.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of law, a final determination that an inves-
3 tigation under subsection (a) is not required with re-
4 spect to a merger, acquisition, or takeover may be
5 made only—

6 “(A) by the President, in any case in
7 which the President is acting on the President’s
8 own behalf under subsection (a); or

9 “(B) by the Secretary of the Treasury,
10 with the concurrence of the Secretary of Home-
11 land Security and the Secretary of Defense, in
12 their respective capacities as chair and vice
13 chairs of CFIUS, in any case in which CFIUS
14 is acting as the President’s designee under sub-
15 section (a).

16 “(2) CERTIFICATIONS REQUIRED.—

17 “(A) PRESIDENTIAL DETERMINATIONS.—
18 In any instance in which the President is acting
19 on his or her own behalf under subsection (a),
20 the President shall certify in writing to a final
21 determination that an investigation under sub-
22 section (a) is not required with respect to a
23 merger, acquisition, or takeover, and such cer-
24 tification requirement may not be delegated to
25 any person.

1 “(B) CFIUS DETERMINATIONS.—In any
 2 instance in which CFIUS is acting as the Presi-
 3 dent’s designee under subsection (a), the Sec-
 4 retary of the Treasury, the Secretary of Home-
 5 land Security, and the Secretary of Defense
 6 shall each certify in writing to a final deter-
 7 mination that an investigation under subsection
 8 (a) is not required with respect to a merger, ac-
 9 quisition, or takeover, and such certification re-
 10 quirement may not be delegated to any person.

11 “(3) NONCONCURRENCE.—If there is not con-
 12 currence among the chair and vice chairs of CFIUS
 13 for purposes of paragraph (1)(B), the President
 14 shall make the final determination that an investiga-
 15 tion under subsection (a) is not required with re-
 16 spect to a merger, acquisition, or takeover, and the
 17 President shall certify such determination in writ-
 18 ing.”.

19 **SEC. 7. MANDATORY SUBMISSION OF INFORMATION.**

20 Section 721(c) of the Defense Production Act of 1950
 21 (50 U.S.C. App. 2170(c)) is amended—

22 (1) in the subsection heading, by striking
 23 “CONFIDENTIALITY OF” and inserting “SUBMISSION
 24 OF”;

1 (2) by striking “Any information or documen-
2 tary material filed” and inserting the following:

3 “(1) **REQUIRED SUBMISSIONS.**—Each person
4 controlled by or acting on behalf of a foreign govern-
5 ment or foreign person shall—

6 “(A) notify the President or the Presi-
7 dent’s designee in writing of any proposed
8 merger, acquisition, or takeover of any United
9 States critical infrastructure (as defined in sec-
10 tion 1016(e) of the USA PATRIOT Act (42
11 U.S.C. 5195c(e))); and

12 “(B) provide such information to the
13 President or the President’s designee with re-
14 spect to such proposed transaction as may be
15 necessary for purposes of this section.

16 “(2) **CONFIDENTIALITY OF INFORMATION.**—
17 Any information or documentary material filed, ei-
18 ther voluntarily or under paragraph (1),”.

19 **SEC. 8. NOTICES OF REVIEWS AND INVESTIGATIONS AND**
20 **QUARTERLY REPORTS REQUIRED.**

21 Section 721 of the Defense Production Act of 1950
22 (50 U.S.C. App. 2170) is amended by adding at the end
23 the following:

24 “(n) **NOTICES OF REVIEWS AND INVESTIGATIONS**
25 **AND QUARTERLY REPORTS TO CONGRESS.**—

1 “(1) NOTICES TO CONGRESS.—The President
2 or the President’s designee shall notify the appro-
3 priate committees of Congress—

4 “(A) not later than 15 days after the date
5 of receipt of written notification of a proposed
6 or pending merger, acquisition, or takeover de-
7 scribed in subsection (a) or (b); and

8 “(B) at the commencement of each inves-
9 tigation under subsection (a) or (b).

10 “(2) QUARTERLY REPORTS TO CONGRESS.—

11 “(A) IN GENERAL.—The President shall,
12 on a quarterly basis, submit to Congress a re-
13 port on all mergers, acquisitions, and takeovers
14 that were the subject of investigation or review
15 under this section during the quarter, including
16 any comments submitted under subsection
17 (1)(2).

18 “(B) FORM.—Each report required under
19 subparagraph (A) may be submitted in unclas-
20 sified form, and may contain a classified
21 annex.”.

1 **SEC. 9. CFIUS AS PRESIDENT'S DESIGNEE UNDER DEFENSE**
2 **PRODUCTION ACT.**

3 Section 721 of the Defense Production Act of 1950
4 (50 U.S.C. App. 2170) is amended by adding at the end
5 the following:

6 “(o) DESIGNEE.—Notwithstanding any other provi-
7 sion of law, the President’s designee for purposes of this
8 section shall be the Committee on Foreign Investment in
9 the United States, established by order of the President
10 in Executive Order 11858, May 7, 1975 (in this section
11 referred to as ‘CFIUS’), or any successor thereto.”.

○